

Senate Executive Calendar and Presidential nominees, they must be reminded that they recently filibustered many, many qualified nominees.

Nonetheless, in spite of all the intransigence of the White House and all of the doublespeak by some of our colleagues on the other side of the aisle, I can report that the Senate has moved forward to confirm 111 of President Bush's judicial nominations since July 2001. That total includes 11 judges confirmed so far this year, and of those, seven were confirmed last week. The Senate last Thursday moved forward on the controversial nomination of Jay S. Bybee to the United States Court of Appeals for the Ninth Circuit.

Those observing these matters might contrast this progress with the start of the last Congress in which the Republican majority in the Senate was delaying consideration of President Clinton's judicial nominees. In 1999, the first hearing on a judicial nominee was not until mid-June. The Senate did not reach 11 confirmations until the end of July of that year. Accordingly, the facts show that Democratic Senators are being extraordinarily cooperative with a Senate majority and a White House that refuses to cooperate with us. We have made progress in spite of that lack of comity and cooperation.

We worked hard to reduce Federal judicial vacancies to under 55, which includes the 20 judgeships the Democratic-led Senate authorized in the 21st Century Department of Justice Appropriations Authorization Act last year. That is an extremely low vacancy number based on recent history and well below the 67 vacancies that Senator HATCH termed "full employment" on the Federal bench during the Clinton Administration.

It is unfortunate that the White House and some Republicans have insisted on this confrontation rather than working with us to provide the needed information so that we could proceed to an up-or-down vote. Some on the Republican side seem to prefer political game playing, seeking to pack our courts with ideologues and leveling baseless charges of bigotry, rather than to work with us to resolve the impasse over this nomination by providing information and proceeding to a fair vote.

I was disappointed that Senator BENNETT's straightforward colloquy with Senator REID and me on February 14, which pointed to a solution, was never allowed by hard-liners on the other side to yield results. I am disappointed that all my efforts and those of Senator DASCHLE and Senator REID have been rejected by the White House. The letter that Senator DASCHLE sent to the President on February 11 pointed the way to resolving this matter reasonably and fairly. Republicans would apparently rather engage in politics.

I urge the White House and Senate Republicans to end the political warfare and join with us in good faith to make sure the information that is

needed to review this nomination is provided so that the Senate may conclude its consideration of this nomination. I urge the White House, as I have for more than 2 years, to work with us and, quoting from a recent column by Thomas Mann of The Brookings Institute, to submit "a more balanced ticket of judicial nominees and engag[e] in genuine negotiations and compromise with both parties in Congress."

The President promised to be a uniter not a divider, but he has continued to send us judicial nominees that divide our nation and, in this case, he has even managed to divide Hispanics across the country. The nomination and confirmation process begins with the President, and I urge him to work with us to find a way forward to unite the Nation on these issues, instead of to divide the Nation.

#### CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

#### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 21, the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit:

Bill Frist, Orrin Hatch, Robert F. Bennett, James Inhofe, John Ensign, Sam Brownback, Michael B. Enzi, Wayne Allard, Mike Crapo, Susan Collins, Pete Domenici, Conrad Burns, Kay Bailey Hutchison, John E. Sununu, Norm Coleman, Charles Grassley.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the nomination of Miguel A. Estrada, of Virginia, to be the United States Circuit Judge for the District of Columbia Circuit shall be brought to a close? The yeas and nays are required under the rule.

The clerk will call the roll.

The senior assistant bill clerk called the roll.

The PRESIDING OFFICER (Mr. ENSIGN). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 55, nays 45, as follows:

[Rollcall Vote No. 56 Ex.]

#### YEAS—55

Alexander	Dole	Murkowski
Allard	Domenici	Nelson (FL)
Allen	Ensign	Nelson (NE)
Bennett	Enzi	Nickles
Bond	Fitzgerald	Roberts
Breaux	Frist	Santorum
Brownback	Graham (SC)	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Campbell	Hagel	Snowe
Chafee	Hatch	Specter
Chambliss	Hutchison	Stevens
Cochran	Inhofe	Sununu
Coleman	Kyl	Talent
Collins	Lott	Thomas
Cornyn	Lugar	Voinovich
Craig	McCain	Warner
Crapo	McConnell	
DeWine	Miller	

#### NAYS—45

Akaka	Dorgan	Lautenberg
Baucus	Dubin	Leahy
Bayh	Edwards	Levin
Biden	Feingold	Lieberman
Bingaman	Feinstein	Lincoln
Boxer	Graham (FL)	Mikulski
Byrd	Harkin	Murray
Cantwell	Hollings	Pryor
Carper	Inouye	Reed
Clinton	Jeffords	Reid
Conrad	Johnson	Rockefeller
Corzine	Kennedy	Sarbanes
Daschle	Kerry	Schumer
Dayton	Kohl	Stabenow
Dodd	Landrieu	Wyden

The PRESIDING OFFICER. On this vote, the yeas are 55, the nays are 45. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### LEGISLATIVE SESSION

#### CONGRESSIONAL BUDGET FOR THE U.S. GOVERNMENT FOR FISCAL YEAR 2004—Continued

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session and resume consideration of S. Con. Res. 23.

The Senator from Oklahoma.

Mr. NICKLES. How much time remains on the Conrad amendment?

The PRESIDING OFFICER. The majority has 51 minutes and the minority has 19 minutes.

Mr. NICKLES. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NICKLES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COLEMAN). Without objection, it is so ordered.

Mr. NICKLES. Mr. President, we are now on the Conrad amendment. The majority leader wishes to speak. I ask unanimous consent the time for that statement be charged against the majority side on the budget resolution. Following the statement, the Senate will recess. That recess will be charged to the amendment. When the amendment time runs out, it will be charged to the majority side on the budget resolution.

Mr. REID. Reserving the right to object, it is my understanding Senator CONRAD has 19 minutes remaining on the amendment.

The PRESIDING OFFICER. Correct.

Mr. CONRAD. Reserving the right to object, I want to understand just what transpired before we go forward.

Mr. REID. If I could state what is going to happen, after the majority leader makes his statement, we will go into a quorum call and the time will be

charged against the amendment, which would mean you would lose 19 minutes and they would lose whatever additional time they had, which would be an hour and 50 or 60 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

## IRAQ

Mr. FRIST. Mr. President, last night the President addressed the Nation on the approaching consequences of 12 years of deceit and brutality by the regime of Saddam Hussein. The stark choice presented to Saddam's regime is fully justified: leave or be removed.

Saddam has failed to disarm. He has violated 17 U.N. resolutions, attacked his neighbors, threatened regional stability and sought and used weapons of mass destruction. He has assaulted his own people and ruled them by terror. This 12-year saga of deceit and denial now enters its final chapter.

For those who suffer daily terror under the oppression of Saddam's regime, for those who have survived torture and imprisonment, for those who watched as family members suffered and died in the agony of chemical weapons attacks, their moment of liberation is near. For those who will defend this dying regime, the moment of reckoning is imminent.

The President has shown great patience and given diplomacy every chance to work, but as he stated last night the time to act has arrived.

In recent days we have heard intemperate and ill-chosen words of criticism directed at the President from some elected to serve in this great body. Such statements are, simply put, disappointing.

We have reached this moment of possible conflict with Iraq, not by our choosing but by Saddam Hussein's. We do not prepare for war because we want to. We do so because we must. The failure of diplomacy to deter Saddam Hussein does not date back to the past 4½ months or to the beginning of this President's term.

The failure of diplomacy traces back through 12 years of defiance by Saddam Hussein, 12 years of deceit by his regime, 12 years of slowly eroding international resolve even among our allies while all the time the threat to this country has grown closer and closer and closer.

Since that dark day in September of 2001, many in this great Nation have lived with the fear of the grave and growing threat of terrorism. Instinctively, the American people understand that we cannot permit a ruthless dictator, aggressor and supporter of terror such as Saddam Hussein to pursue and possess the world's most deadly weapons. This is a threat that must be addressed, now.

Last night, in committing to meet this threat, the President stated what we have all come to expect and to respect, in him. He said:

That duty falls to me as commander in chief by the oath I have sworn, by the oath I will keep.

The President has committed the Nation to action. We will not wait while the threat gathers with a destructive force that is incomprehensible. We will live in freedom or fear.

I thank the Lord that at this moment of testing, this great Nation is led by this great leader.

It has been suggested by some here on the Senate floor that the President acts without justification, without a legal basis, and without the consent of Congress. This is flat out wrong.

Mr. President, each and every Senator is entitled to their own opinion, but they are not entitled to their own facts.

On August 2, 1990, Iraq—without provocation—invaded and occupied the territory of Kuwait. Through 5½ months of diplomacy, Iraq ignored demands that it withdraw from Kuwait. And on January 16, 1991, a U.S.-led coalition of nations launched Operation Desert Storm. After the liberation of Kuwait, former President George Bush announced a cease-fire, unilaterally halting offensive military operations on February 28, 1991.

On March 3, 1991, General Norman Schwarzkopf and the commander of Iraqi forces concluded a cease-fire agreement, temporarily suspending gulf war hostilities. The cease-fire agreement obligated Iraq to accept unconditionally the voluntary destruction, removal, and rendering harmless—under international supervision—of all nuclear, chemical, and biological weapons, and all stocks of agents, and all related subsystems and components, and all research, development, support, and manufacturing facilities.

The cease-fire agreement was ratified and approved on April 3, 1991, by the U.N. Security Council in Resolution 687. That resolution, which is still in force, reaffirms all 13 of the Security Council's earlier resolutions on Iraq's invasion of Kuwait.

In a letter delivered to the Security Council on April 6, 1991, Saddam Hussein's regime formally accepted the terms of the cease-fire without conditions. Nevertheless, Saddam Hussein has consistently and repeatedly refused to abide by his obligations to disarm under international supervision as required in the 1991 gulf war cease-fire and succeeding United Nations resolutions, and has attacked U.S. and British aircraft lawfully enforcing these obligations almost continuously since 1991.

On November 8, 2002, the United Nations Security Council unanimously adopted Resolution 1441. This resolution gave Saddam Hussein's regime "a final opportunity to comply with its disarmament obligations," which preserved and cited the authorities to act contained in Resolution 687, and placed the burden of proving compliance squarely on the Iraqi dictator.

In the intervening 12 years, Saddam Hussein has blatantly and cynically persisted in his illegal refusal to comply with his obligations under the 1991

cease-fire agreement that suspended hostilities in the gulf war, and with Resolution 1441.

Mr. President, international obligations such as those which Saddam Hussein has ignored for more than a decade are meaningless unless they are backed by an unflinching resolve and international commitment to enforce them.

Given Saddam Hussein's weapons of mass destruction programs, his demonstrated willingness to use these weapons, and possible intersections between his regime, al-Qaida, and other international terrorist organizations, the absence of such resolve could have devastating consequences for world peace in general and to the United States in particular.

If it is necessary to act, if Saddam fails to heed the ultimatum, any subsequent military action against Saddam Hussein's regime will be lawful and fully authorized, pursuant to a series of resolutions passed by the Congress, pursuant to the President's Commander in Chief authority under the Constitution, pursuant to the venerable international legal principle confirming the inherent right of a state to defend itself, pursuant to Article 51 of the United Nations Charter, and pursuant to a long series of United Nations Security Council resolutions.

In the event of hostilities, the U.S. service men and women on the front lines will have this Congress' full support and the backing of the American people. We will do what it takes to give them the resources they need to complete their mission. Our thoughts and our prayers are with them, and with their families and loved ones here at home.

Mr. President, I yield the floor.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. Who yields time to the Senator from Virginia?

Mr. WARNER. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, I commend our distinguished majority leader for his very heartfelt remarks. We were together last night at the meeting with the President. It was a somber meeting. But, clearly, the President is a man at peace with himself and has inner confidence. He has carefully gone about the decisionmaking to arrive at the decision he made last night and such decisions as he may make here in the ensuing hours and days to come.

But most especially, in the minds of all of us last night were the men and women of the Armed Forces and their families. The distinguished leader has spoken most eloquently about them. Because, in the end, together with a large group of civilians who are employed in the various agencies and Departments of our Government, they must bear the risk, the brunt of such force as may be used against them. So I am privileged to stand here with my distinguished leader today.

I, too, am concerned about the remarks of some of our colleagues. I found some of those remarks to be, in my judgment, a disbelief. I could not believe they were said. But bottom line, this morning, in the Armed Services Committee, in a formal meeting of the committee, I invited each Senator present, on both sides of the aisle, to address opening statements on the events of the last 24, 48 hours. I say to my distinguished leader and to my colleagues, I felt their responses were very responsible and, indeed, showing support for the men and women in the Armed Forces and the Commander in Chief, who must make those decisions to lead them.

I yield the floor.

### RECESS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now recess until 2:15 p.m. for the weekly party meetings, provided that recess time be charged as under the previous order.

There being no objection, the Senate, at 12:58 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

### CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2004—Continued

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I yield the Senator from Utah 20 minutes.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I ask unanimous consent that the time I use be charged against the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### MEDICAL LITIGATION CRISIS

Mr. HATCH. Mr. President, today I rise to speak about the medical liability and litigation crisis in our country.

This is a crisis that is preventing patients from accessing high-quality health care—or, in some cases, any care at all—because doctors are being driven out of practice. It is a crisis that is needlessly increasing the cost of health care for every American.

This is not the first time we have addressed this issue. As many of you will recall, we debated, and passed, medical litigation relief in the Commonsense Product Liability and Legal Reform Act back in 1995. Unfortunately, the language we passed was stripped from that bill in conference.

I am sorely disappointed that—in the ensuing eight years—we have not addressed this problem. As a result, the situation has become worse, not better; the problem has expanded, not shrunk. We must act now if we are to fix the crisis in health care delivery this has caused in many parts of our country.

I was pleased last summer when President Bush announced his desire to address this issue. I am even more pleased that the President has continued to emphasize the importance of the problem and the need for reform in speeches around the country, and in his State of the Union Address. We in the Senate welcome the President's support in this effort.

Make no mistake. We have a health care crisis in this country, one that is due in large part to litigation that is out of control. But not all Americans may be aware of just how serious are the ramifications of this crisis.

This map, with data supplied by the American Medical Association, shows the states that currently are experiencing a medical liability crisis and those that are showing signs of developing a crisis. The 18 red states are in crisis. The 27 yellow states are showing problem signs. Only five states are currently "ok". On a map with last year's data, only 12 states were in crisis. The problem is growing and it reaches from coast to coast.

I ask unanimous consent to have printed in the RECORD a July 18, 2002, Associated Press article, "Soaring Malpractice Insurance Squeezes Out Doctors, Clinics," that highlights some of the problems faced by patients and doctors.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Associated Press, July 18, 2002]

#### SOARING MALPRACTICE INSURANCE SQUEEZES OUT DOCTORS, CLINICS (By Theresa Agovino)

The shock from Jim Lawson's July 4 death in a Nevada auto accident was felt well beyond his family and friends.

The two-car crash on a busy street leading to Las Vegas airport came just one day after the nearest trauma clinic, at the University Medical Center, closed down. The 58 orthopedic surgeons who rotate through the hospital had insisted on relief from the soaring cost of medical malpractice insurance.

No one can be sure his death, confirmed at an emergency room an hour away, could have been avoided. Trauma centers generally offer more effective attention for accident victims.

But it prompted a quick July 13 reopening of the university center. Some 10 to 15 of the doctors agreed to become temporary employees of the county hospital, limiting their liability to \$50,000, while the governor tries to enact legislation that would restrict medical malpractice awards.

On a much broader level, it brought new attention to a national problem that doctors say is obliging many of them to flee certain states or give up certain specialties—or the entire profession—because of skyrocketing insurance premiums linked to soaring jury awards.

The impact of the trauma center's closure in Las Vegas was summed up by its director, Dr. John Fildes: "The standard of care in our community was set back 25 years."

The number of communities suffering similar problems is mushrooming.

This summer, two Pennsylvania hospitals, one Arizona hospital and a clinic in Oregon closed their obstetrics units.

Several counties in upstate New York have no obstetricians covering night shifts.

Soon, two counties in Pennsylvania won't have a neurosurgeon. Seven hospitals on the Mississippi coast share 3 neurosurgeons, one of whom, Terry Smith in Biloxi, is likely to leave next month because he can't find insurance.

Thirteen insurance companies have refused to cover Dr. Smith, who currently pays \$65,000 in annual premiums. One company may agree to cover him, but it is likely to cost \$100,000, an amount he says he can't afford.

Smith said he often puts in seven-day weeks now to meet the community's needs.

"This is an area with lots of poor and minority people, so you as a doctor feel you're doing something important," Smith said. "I feel guilty about leaving but I just don't have a choice."

"The two guys I'm leaving behind are friends of mine and they'll be working even harder," he said.

Mississippi is one of 12 states where rising premiums, tied to awards by state juries in malpractice cases, are creating a crisis, according to the American Medical Association. The others are New York, Nevada, Florida, Ohio, Texas, Georgia, Pennsylvania, New Jersey, Washington, Oregon and West Virginia.

Because of risks associated with certain medical conditions and forms of treatment, some specialties pay especially high rates, and those rates are compounded by being charged in states where laws place fewer limits on jury awards.

For example, while premium increases this year average about 15 percent nationwide for all practices, rates for obstetricians and gynecologists in Pennsylvania are set to balloon by anywhere from 40 percent to even 81 percent, according to Medical Liability Monitor, a trade publication. In West Virginia, they are catapulting anywhere from 29 percent to 36 percent.

The average jury award for medical malpractice doubled to \$1 million in the six years ending in 2000, according to Jury Verdict Research, a private database used by lawyers, insurers and doctors. Lawyers who handle malpractice cases are critical of the database, pointing out that it is not comprehensive and contending that its findings are inflated.

In any event, verdicts of more than \$1 million are common in states like Mississippi and Nevada. In the first six months of this year, there were five jury awards in Mississippi and the average verdict was \$5.6 million, according to the state's medical association.

"I think juries are just frustrated with managed care and health care in general, so they take it out on doctors," said Dr. Michael Daubs, an orthopedic surgeon who said he may leave Las Vegas if his rates keep rising.

He says he has never been sued but his insurance jumped \$20,000 to \$60,000 a year. He has applied for medical licenses in three other states.

Some insurance companies are leaving the medical liability business. St. Paul Cos, the second largest provider of medical malpractice insurance, announced last December it would stop writing policies, leaving 42,000 doctors searching for coverage. St. Paul said it lost close to \$1 billion on its medical malpractice line last year.

Smaller insurers are also cutting back or leaving the business. Pennsylvania's second-largest medical malpractice insurer, Phico Insurance Co., failed earlier this year and was liquidated by the state.

Legislation has been introduced in Congress that would limit the pain and suffering portion of malpractice awards to \$250,000. The bill, intended to override state laws,